IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10356 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

B K GOHIL

Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/05/2000

ORAL JUDGEMENT

Learned advocate Ms. Bhatt is appearing for the petitioner corporation. Learned advocate Mr. Brahmbhatt is appearing for the respondent workman.

Rule, service of which is waived by learned advocate Mr. Brahmbhatt appearing for the respondent workman. On the facts and in the circumstances of the case and with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

In this petition, the petitioner corporation has challenged the impugned award passed by the Labour Court, Vadodara in Reference (LCV) No. 484 of 1994 whereby the labour court has directed the petitioner to reinstate the respondent workman in service with continuity of service and with 75% of the back wages for the intervening period. Brief facts leading to the filing of this petition are as under:

The respondent was employer with the petitioner corporation as a driver for seven years. On 12.11.1992, while the respondent was on duty, it was alleged that he was found in drunken condition. In that connection, departmental inquiry was initiated against him and at the end of the departmental inquiry, the charges levelled against him were found to have been proved and, therefore, under order dated 15.4.1993, the respondent was dismissed from service by the competent authority.

Said action of the petitioner corporation was challenged by the respondent workman before the labour court by filing aforesaid reference and the labour court has passed the aforesaid impugned award dated 10.2.1999. Feeling aggrieved and dissatisfied with the said award passed by the labour court, the petitioner has approached this Court by means of this petition.

I have heard the learned advocates for the parties. I have also perused the impugned award and the documents produced on record. Before the labour court, the respondent workman has filed the statement of claim and written statement thereto was also filed by the petitioner corporation. Documentary evidence was produced vide Exh. 7. Before the labour court, the respondent workman has admitted the legality, validity and propriety of the departmental inquiry initiated against him by filing pursis at Exh. 13 and no oral evidence was led by the petitioner before the labour court. The labour court, after considering the oral and documentary evidence on record has come to the conclusion that in respect of the allegations of having found in drunken condition in the rest house was not proved in the departmental inquiry. The labour court has also observed

that no police complaint was filed by the corporation against the respondent workman and that no FIR was lodged before the police and produced before the labour court. The labour court has also observed that there was no any evidence in respect of blood examination of the respondent workman. The labour court has observed that only on the basis of the evidence of some witnesses, charge of having been found in drunken condition cannot be considered or said to have been found proved. No witness was examined by the petitioner before the labour court for proving the charge levelled against the respondent workman. The labour court has, therefore, in clear terms, held that the charge levelled against the respondent workman was not found to have been proved. However, looking to the past record of the respondent workman, the labour court has not granted full backwages while directing the petitioner to reinstate the respondent workman in service but has granted only 75% of the back wages for the intervening period.

Learned advocate Ms. Bhatt appearing for the respondent workman has submitted that the labour court has erred in considering that no police complaint was filed and that no FIR was filed and no one has been examined before the labour court. She has further submitted that the labour court has committing gross error in facts in ignoring the record of the departmental inquiry held against the respondent workman and, therefore, according to her, the impugned award passed by the labour court is not legal and valid.

On the other hand, learned advocate Mr. Brahmbhatt appearing for the respondent workman has submitted that this Court is having very limited power and jurisdiction under Article 226 and 227 of the Constitution of India and this Court cannot act as an appellate court and cannot reappreciate the evidence which was led before the labour court and he has submitted that on the date of the alleged incident, it is an undisputed position that he was not in drunken condition when he resumed the duty and completed two scheduled trips of bus route. According to him, otherwise, the respondent would not have been able to complete two scheduled trips. In the chargesheet itself, it was mentioned by the petitioner that on the date of incident, the respondent had completed two scheduled trips and on the third trip, it was alleged that he was found in drunken condition. He has submitted that in view of the admitted fact that during the course of first two trips, he was not found in drunken condition, it cannot be said that he was in drunken condition.

Therefore, according to him, a false report has been submitted against the respondent and without examining any independent witness during the course of departmental inquiry, finding of guilt has been recorded against him and there was no sufficient and concrete evidence against the respondent which would justify the conclusion of the inquiry officer. He has, therefore, submitted that the labour court has rightly considered the facts on record and has rightly passed the impugned award of reinstatement of the workman. He has, therefore, submitted that this court should not interfere with such award while exercising the jurisdiction under Article 226 and 227 of the Constitution of India.

Upon perusal of the impugned award, according to my view, the labour court has not considered as to whether the respondent was gainfully employed during the intervening period or not. The labour court has not at all discussed this aspect of the matter and has without considering this aspect, granted mechanically 75% of the back wages without considering as to whether the respondent has made any such statement before the labour court that he was not gainfully employed during the intervening period. However, considering the past record of the respondent workman, at page 27 to 28, annexure "E" to the petition, in which there are in all six incidents where accident has occurred and on two to three occasions, bus was break down, tyre was punctured and some damage was caused to the bus and, therefore, considering thesefacts and also a fact that adriver normally cannot remain without job, I am of the opinion that the impugned award passed by the labour court is required to be modified in so far as it relates to back wages by reducing the back wages to 50% from 75%. To that extent, the impugned award is required to be modified. Since the learned advocate appearing for the petitioner corporation has not been able to point out any jurisdictional error and/or infirmity in the impugned award, the award does not call for any interference in so far as it relates to reinstatement in service with continuity of service is concerned. Thus, inview of the above discussion, the impugned award passed by the labour court in Reference (LCV) 484 of 1994 dated 10.2.1999 is modified as under:

The petitioner is directed to reinstate the respondent workman in service with continuity of service and with 50% of the back wages for the interim period. Thepetition is partly allowed. Rule is made absolute in terms indicated hereinabove. There shall be no order as to costs.

Since this court has partly allowed this petition and has modified the impugned award qua back wages for the intervening period alone, in the larger interest of justice, the petitioner corporation is directed to reinstate the respondent workman in service within four weeks from the date of receipt of copy of this order. The petitioner is further directed to pay 50% back wages to the respondent workman for the intervening period from thedateof dismissal 15.4.1993 to 10.2.1999 within eight weeks from the date of receipt of copy of this order. The petitioner is further directed to pay full wages to the respondent workman from the date of the impugned award 10.2.1999 till the date of his actual reinstatement inservice within eight weeks from the dateof receiptof copy of this order.

2.5.2000. (H.K.Rathod,J.)

Vyas